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LETTER DATED 25 MARCH 1994 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government, I have the honour to transmit to you herewith a letter dated 23 March 1994 from Mr. Mohammed Said al-Sahaf, Minister for Foreign Affairs of the Republic of Iraq, concerning Security Council resolution 778 (1992).

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

Annex

Letter dated 23 March 1994 from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General

I should like to state the following with regard to Security Council resolution 778 (1992):

1. In paragraph 1 of the above-mentioned resolution, the Council decides that all States in which there are funds of the Government of Iraq that represent the proceeds of sale of Iraqi petroleum or petroleum products, paid for on or after 6 August 1990, shall cause the transfer of those funds as soon as possible to the escrow account provided for in resolutions 706 (1991) and 712 (1991).

Funds that may have been placed in Iraqi deposit accounts cannot legally be included in this category; even if they are derived from the sale of petroleum, by being placed in the account they cease to belong to this category and become simply Iraqi deposits, inasmuch as the source of the obligation has changed from a contract of sale to a contract of bank deposit. Consequently, they no longer represent the proceeds of sale of petroleum within the meaning of the resolution.

The above is supported by the contents of paragraph 2 of the same Security Council resolution, which refers to the proceeds of sale of petroleum before they are placed in any account, which means that the proceeds of the sale are placed directly in the escrow account.

2. The rules of banking practice provide that an escrow account does not lose its link to the owner of the funds - in this case, the Government of Iraq - and, accordingly, the view of Iraq should be consulted in any action taken in respect of the account, in its capacity as legitimate owner of all these funds.

3. It should also be borne in mind that general principles require that these funds deposited in the escrow account be invested in a fair manner and the interest added to the principal.

From the above, it is clear that the provisions of the Security Council resolution in question are not legal but are conducive to the collapse of the stable banking practices that constitute the essence and the basis of international trade.

I should be grateful if you would have this letter circulated as a document of the Security Council.

(Signed) Mohammed Said AL-SAHAF
Minister for Foreign Affairs
of the Republic of Iraq